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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

To: The Commission

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

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SUMMARY

The rules adopted through this proceeding should accomplish two goals. First, they should ensure that universal service is available across the nation. Second, the rules should treat all carriers evenhandedly, avoiding excessive burdens on any class of carriers and permitting all carriers to earn universal service subsidies. These comments focus on the goal of treating all carriers, including CMRS providers such as Vanguard, fairly.

First, the Joint Board and the Commission should recognize, as the LECs have admitted, that CMRS providers already subsidize basic local service through the charges they pay to local exchange carriers for interconnection. Imposing additional subsidy obligations at this time would be unfair and contrary to the requirements of the 1996 Act. CMRS providers should contribute to universal service only after interconnection rates are reformed.

Next, the universal service rules should prevent "double-dipping" in calculating contributions to state and federal universal service funds. There are potential overlaps between state and federal universal service funds, and for CMRS providers with multi-state service areas, among state funds. If different regulators adopt different calculation methodologies, multi-jurisdictional carriers could be subject to universal service charges that far exceed what they would have paid if a uniform methodology were applied. The 1996 Act permits the Commission to require consistent state rules for calculating subsidy payments.

Finally, the Joint Board and the Commission should recognize that there is significant value in permitting all carriers to obtain funds from the universal service pool. Permitting all carriers to obtain subsidies will attract the lowest-cost providers, such as wireless providers in rural areas, and will lower the necessary subsidy in the long run. Consumers also will benefit from competition in subsidized services.

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Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.[1/] This proceeding considers some of the most important issues the Commission must address following the passage of the Telecommunications Act of 1996.[2/] Vanguard wholeheartedly supports the statutory goal of assuring the availability of universal telecommunications service, which reflects a codification of longstanding Commission and state policies towards the same goal. In implementing the new statutory mandate, however, the Commission also must meet the statutory mandate for universal service policies that are "equitable and nondiscriminatory." These comments focus on how those principles should be applied to Commercial Mobile Radio Services ("CMRS") providers such as Vanguard.

1/ Notice of Proposed Rulemaking and Order Establishing Joint Board, *Federal-State Joint Board on Universal* Service, CC Dkt. No. 96-45, rel. Mar. 8, 1996 (the "Notice"). The comment date for the Notice has been extended to April 12. *See* Order, *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, DA 96-483, rel. Apr. 1, 1996.

2/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 *et seq.*) (the "1996 Act").

I. Introduction

Vanguard serves more than 400,000 customers, and is a long-time provider of cellular service. Vanguard entered the cellular marketplace in 1984 and now is one of the 20 largest cellular carriers in the country. Vanguard's cellular systems serve 26 markets in the eastern half of the United States and cover a geographic area containing more than 7.5 million people. Vanguard's service area contains many rural and low-income communities, such as those served by its Huntington-Ashland, West Virginia-Ohio-Kentucky cellular system.

Successful implementation of the 1996 Act's universal service provisions is dependent on achieving two important goals. First, the Commission should endeavor to assure that an appropriate level of universal service is available to everyone across the country. Second, the Commission must adopt rules that do not unreasonably burden or discriminate against any group of telecommunications carriers. These goals do not conflict, but rather are complementary. If all carriers pay their fair share, but no more, of the costs of universal service, and if all carriers have an opportunity to obtain support from the universal service fund if they provide the designated services, then the rules will help achieve both goals. Carriers will have an incentive to cooperate in the universal service process and to provide the services that the Joint Board and the Commission deem to fall within the definition of universal service. Thus, these comments focus on assuring that the rules adopted by the Commission are fair to all telecommunications carriers.

In the context of cellular and other commercial mobile radio services, there are specific steps that the Joint Board and the Commission should take to reach a fair result. First, CMRS providers should subsidize universal service only in proportion to their actual costs — that is, they should pay once and only once for universal service. That means that

CMRS universal service obligations should be dependent on reform of the current CMRS interconnection regime, which now subsidizes LEC landline operations. At the same time, multi-jurisdictional carriers, including CMRS providers, should not be subject to overlapping universal service funding obligations that effectively tax more than 100 percent of a carrier's revenues.

Second, any party that makes universal service payments also should be eligible to obtain subsidies from the appropriate universal service fund if it provides the services the fund supports. It is important for the rules governing universal service, at both the federal and state level, to avoid discriminating against service providers and technologies that can meet the nation's universal service needs. It is particularly important to encourage provision of universal service by carriers with the lowest costs.

II. CMRS Carriers' Universal Service Obligations Should Depend on the Results of the Pending Interconnection Proceeding.

The first principle that the Joint Board and the Commission must follow is to assure that telecommunications carriers bear no more than their fair share of the costs of universal service. For that reason, CMRS providers should have no obligation to make payments into any universal service fund until the Commission reforms the current system of compensation for CMRS interconnection.

First, it is self-evident that no carrier should be required to pay more than its fair share of the costs of supporting universal service. This principle is a matter of basic competitive equity. This principle also is embodied in the 1996 Act, which requires contributions to be "equitable and nondiscriminatory." 47 U.S.C. § 254(d) (federal universal service fund), (f) (State universal service fund). Thus, any mechanism that results in a

carrier making two or more payments to support the same services, while others pay only once, would be contrary to the requirements of the 1996 Act.

Cellular carriers already are making implicit contributions to universal service, however, by paying rates for interconnection with incumbent local exchange carriers that far exceed the costs that LECs incur. As Vanguard documented in its reply comments in the Commission's CMRS interconnection proceeding, the amounts paid by cellular carriers for interconnection exceed costs by as much as $1.03 billion a year. Even using the unsupported cost estimates of the United States Telephone Association, CMRS providers pay LECs at least $450 million in charges in excess of the LEC cost for interconnection each year.[3/]

The LEC justification for these excessive charges is that they support money-losing basic services, such as residential service. For instance, U S West claims that absent the existing subsidy from CMRS interconnection it would have "to increase the rates for local residential service by approximately 50¢ per month per residential line."[4/] Other LEC commenters make the same argument.[5/] Thus, it is apparent that CMRS providers already are subsidizing basic telephone services, including the types of service that will be covered by the universal service funds adopted through this proceeding and separate state proceedings. This is one of the primary justifications the LECs are using to oppose changes in the current CMRS interconnection pricing regime.

3/ *See* Reply Comments of Vanguard, CC Dkt. No. 95-185, filed Mar. 25, 1996, at 6-7.

4/ Comments of U S West Communications, Inc., CC Dkt. No. 95-185, filed Mar. 4, 1996, at 27.

5/ *See, e.g.*, Comments of NYNEX Corporation, CC Dkt. 95-185, filed Mar. 4, 1996, at 15-19.

In this context, it is evident that it would be inconsistent with the principles of the 1996 Act to require CMRS providers, who already are subsidizing LEC basic services through above-cost interconnection rates, to make an additional payment into a universal service fund to support basic local exchange services. Indeed, such a double subsidy would be contrary to the express requirement that contributions be "equitable and nondiscriminatory."[6/] Consequently, CMRS providers should be exempt from making universal service contributions until such time as the existing universal service subsidy is removed from their interconnection charges.

III. The Rules for Determining Universal Service Fund Payments Should Prevent "Double-Dipping" When Calculating a Carrier's Contributions.

Multi-jurisdictional carriers face special problems in the context of universal service funding. When a carrier offers services both within a state and between states, and when the carrier's coverage area encompasses multiple states, it is quite possible that it will be subject to overlapping or even conflicting universal service requirements, especially for payments to universal service funds. This is a particular problem for CMRS providers. Thus, the Joint Board should recommend rules that prevent CMRS providers and other telecommunications carriers from being subject to conflicting rules for calculating universal service fund payments that result in excess payment to those funds.

Almost every carrier is multi-jurisdictional, either in terms of the services it offers or the area it covers. Interexchange carriers, for instance, typically offer both intrastate and interstate services.

6/ 47 U.S.C. § 254(d), (f). Moreover, continuation of the existing implicit subsidy payments through CMRS interconnection charges would be inconsistent with the 1996 Act's requirement that, universal service support "should be explicit[.]" 47 U.S.C. § 254(e).

The problem of multi-jurisdictional services is particularly acute for CMRS providers, however, given the nature of their licensing and of their coverage areas. Vanguard, for instance, holds a cellular license for the Huntington-Ashland, West Virginia-Ohio-Kentucky MSA, which includes parts of three states. Given the nature of wireless service, it is entirely possible for a caller with a Kentucky billing address to be making a call using a West Virginia cell site from a location in Ohio. In many cases, a cellular carrier with a multistate system may not be able to tell if a call crosses state boundaries because cellular carriers cannot determine the exact locations of their customers. This problem is exacerbated by the Commission's new licensing regimes for PCS and SMR, in which most license areas include parts of two or more states.[7/]

With so many services crossing jurisdictional boundaries, without appropriate action by the Commission it is likely that telecommunications carriers will be subjected to "double-dipping" in universal service fund calculations. For instance, if the Commission adopts interstate revenues as the appropriate methodology for calculating a carrier's payment, while a State adopts a methodology that depends on total revenues generated in the State, then a carrier may have its interstate revenues included in the calculations twice.[8/]

Even more significant problems could arise if CMRS providers are required to comply with a different payment methodology in each State they serve. For instance, the

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7/ In comparison, landline carriers do not have the same concerns because their facilities and customers are in fixed locations. Thus, their facilities and revenues are easily distinguishable from jurisdiction to jurisdiction, especially for those carriers who now follow the Commission's separations process.

8/ The Commission could avoid this and other problems related to allocation of CMRS revenues by recognizing that CMRS is entirely jurisdictionally interstate as a result of the amendments to Sections 2(b) and 332 of the Communications Act in the 1993 Budget Act. *See* Reply Comments of Vanguard, CC Dkt. No. 95-185, filed Mar. 25, 1996, at 23.

operator of a three-State system such as Vanguard's Huntington-Ashland system could discover that one State bases its contributions on the number of subscribers, the second State bases contributions on revenues and the third uses gross assets (which would correlate to the location of facilities). If most subscribers are in the first State and most facilities are in the second State, the CMRS provider could pay 25 or 50 percent more into the States' universal service funds than it would pay if each State used the same methodology. This is an unreasonable result and would competitively disadvantage the CMRS provider.

The Joint Board and the Commission can avoid these dangers by requiring consistent methodologies for calculating universal service fund contributions and by adopting rules that prevent overlaps between the revenues (or any other proxy) used by separate jurisdictions in calculating contributions. The Commission has the authority to require consistent methodologies because the 1996 Act gives States the power to adopt only regulations that are "not inconsistent with the Commission's rules," and that "do not . . . burden Federal universal service support mechanisms." 47 U.S.C. § 254(f). These provisions give the Commission the power to determine what methodologies may be used to determine universal service support obligations. Moreover, doing so is consistent with the Congressional intent to assure that no carrier is unnecessarily burdened by universal service funding obligations.

IV. Telecommunications Carriers that Contribute to the Support of Universal Service Also Must Be Eligible for Universal Service Subsidies if They Offer Qualifying Services.

While it is important for funding obligations to be spread evenly, and to avoid double taxation of CMRS providers, it is equally important for the Joint Board and the Commission to recognize that all telecommunications carriers should have an opportunity to provide the services that fall within the universal service umbrella. In particular, CMRS providers can

play an important role in serving underserved communities and should be given the opportunity to help meet this public need.

Making universal service funds available broadly is necessary as a matter of basic equity. It is unreasonable to require any group of telecommunications carriers to bear the burden of universal service funding without also giving them the opportunity to share in the benefits that will be available to other telecommunications carriers. There is no principled basis for making distinctions based on technologies or service areas or any other basis besides whether a carrier provides a service that falls within the categories of services for which subsidies are available. Indeed, there is no more reason to prevent wireless carriers from obtaining a subsidy than there would be to deny a subsidy because a carrier uses fiber optic transmission rather than copper wire.[9/]

Wireless carriers may have a particularly important role to play in providing service to rural areas because they may be the lowest cost provider for those areas. Within a cellular carrier's existing coverage area, there is very little additional cost for adding a new customer, no matter how far that customer is from the nearest cell site or the carrier's MTSO. Unlike landline carriers, who may have to lay long stretches of expensive wiring to serve a single new rural customer, a cellular carrier typically can serve a new customer with only minimal changes in its current facilities.

The potential cost advantages of cellular, other wireless services and other new technologies are particularly important because the Joint Board and the Commission should

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9/ The potential advent of wireless local loops makes it even more obvious that there is no reason to make technological distinctions.

work to minimize the subsidies flowing into and out of the universal service fund.[10/] If lower-cost providers are given the opportunity to obtain funding, the need for subsidies and, consequently, the size of the fund, will be reduced. Moreover, encouraging low-cost providers to provide universal service is more economically efficient and will reduce the burden of subsidies on consumers, who ultimately bear the cost of any subsidy program. Thus, a technologically neutral policy that encourages all carriers to provide universal service also will benefit consumers in the long run.

V. Conclusion

This proceeding can establish many important principles to govern the provision and support for universal service across the nation. While the Joint Board's recommendations and the Commission's decisions on the scope of universal service are critical, it is equally important to ensure that the competitive equity requirements of the 1996 Act are met as well. For that reason, the rules adopted in this proceeding should prevent telecommunications providers from being doubly-taxed to pay for universal service, either through combining the current implicit subsidies in CMRS interconnection charges with a CMRS contribution obligation or through jurisdictionally overlapping universal service assessments. At the same time, all telecommunications carriers must be given the opportunity to benefit from the universal service fund to the extent they provide universal service. These principles are consistent with Congressional intent in adopting the 1996 Act and with competitive equity.

10/ It may well be the case that the only reason the subsidies are necessary is because, without competition, there has been no incentive to lower the costs of providing local exchange service in rural and other high cost areas. One of the most significant consumer benefits of encouraging competition is that it encourages all competitors to lower their costs to increase their market penetration and profits.

Consequently, Vanguard Cellular Systems, Inc. urges the Joint Board to recommend, and the Commission to adopt, rules that are consistent with these comments.

Respectfully submitted,

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April 12, 1996

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 12th day of April, 1996, I caused copies of the foregoing "Comments" to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

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